UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,155	10/06/2003	Paul Hayward Kelly	DIXI01-00011	5740

23990 7590 11/26/2008
DOCKET CLERK
P.O. DRAWER 800889
DALLAS, TX 75380

EXAMINER	
KUMAR, RAKESH	

ART UNIT	PAPER NUMBER
3651	

MAIL DATE	DELIVERY MODE
11/26/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/678,155
Filing Date: October 06, 2003
Appellant(s): KELLY ET AL.

William A. Munck

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07/03/2008 appealing from the Office action mailed 12/27/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The amendment after final rejection filed on 02/27/2008 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9,14-17 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wittern, Jr, et al. (U.S. Patent Number 6,302,293) in view of O. T. Thompson et al. (U.S. Patent Number 2,359,398) and in further view of Percy et al. (U.S. Patent Number 5,651,476).

Claims 10 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wittern, Jr, et al. (U.S. Patent Number 6,302,293) in view of O. T. Thompson et al. (U.S. Patent Number 2,359,398) and in further view of Percy et al. (U.S. Patent Number 5,651,476).

Claims 11-13,18-23, 24-27 and 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wittern in view of Thompson and Percy as applied to claim 1 above, and further in view of Newbury (U.S. Patent Number 4,498,584).

(10) Response to Argument

In regards to claims 1-9,14-17 and 28 the Examiner agrees with the Applicant in regards to the “inherency argument,” thus, it is believed the argument by the Examiner was not fully supported by the Examiners reasoning’s as stated in the rejection.

The applicant’s claimed limitations in claim 1 recite “a decoupling member isolating a first area of the column wall from the a second area of the column wall to minimize forces in the first area from being transferred to the second area.” The applicant’s “decoupling member” as stated in the claim and shown in the applicant’s drawings is a longitudinally extending hole in the sheet panel of the column wall. The "decoupling member" (hole) as shown in the applicant's drawings is devoid of material thus the upper part of the hole does not contact the lower part of the of the hole. It is evident from the drawings of the applicant, any load (load of the upper portion of the sheet panel itself or the portion of the load of articles supported above the upper edge of the hole) placed on the panel cannot be transferred through the empty portion of the hole (devoid of material) rather all loadings above the "decoupling member" (hole) must be supported by the material at the longitudinal edges of the hole in the panel. As a result, effectively isolating a first area of the column wall (above the hole) from a second area of the column wall (below the hole) to minimize forces in the first area from being transferred to a second area.

Now turning the applicant attention to the cited reference of Wittern, the references discloses a hole (element 38; Figure 1) disposed longitudinally in the sheet panel of the column wall. The hole in the panel is devoid of material, the loads on the panel above the upper edge of the hole are transferred around the longitudinal slot therefore as disclosed by the applicant the loads of the upper portion of the panel are isolated. Therefore the hole of Wittern Isolates a first area of the column wall (above the hole) from the a second area (below the hole) of the column wall to minimize forces in the first area from being transferred to the second area thus acting as a "decoupling member" as disclosed in the applicants claim. The applicant has not effectively distinguished how the hole ("decoupling member") disposed on the sheet panel of the column wall of the applicant is different from the hole (longitudinal slot) as taught by the teaching of Wittern which acts to decouple the stresses experienced by the sheet panel above the slot in the column wall.

In regards to the applicant's arguments "the applicants are unable to find in the Wittern reference any teaching that the slot members relied upon by the Examiner acts as stiffening elements in the column wall." The Office action does not specifically state the teachings of Wittern disclose the slot member acting as a stiffening element. Claim 1 rejection states the teachings of Thompson disclose shelves (34) constructed using a thin sheet metal comprising an integrally stamped bead (35) to provide additional rigidity to the sheet metal panel and a means to prevent bowing of the shelf under the weight of objects or articles resting on the shelf. The stamped bead constructed on the sheet metal panel acts as a "stiffening element." Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Wittern to include stiffening elements as taught by Thompson disposed next to the slot members of Wittern to provide rigidity to the sheet panels.

In regards to the Applicants assertion "the deflection plate 70 does not act as an alignment member integrally formed of the wall surface 44." The Office directs the Applicants attention to the limitations of claim 1 as recited by the Applicant wherein the limitations read "the integrally formed alignment member provides for proper positioning." The limitation "integrally" as defined in *Webster's Dictionary* is as follows: *"formed as a unit with another part" or "consisting or composed of parts that together constitute a whole."* Thus, by definition the deflection plate member (70, Figure 4, Percy) is an integrally formed alignment member providing for proper positioning of product containers.

In regards to claims 10 and 33, "stamped from the material sheet," in view of the Office "deflection plate member (70, Figure 4, Percy) is formed of from a material sheet (see the sheet material in Figure 4).

In regards to claims 11-13,18-23, 24-27 and 29-32 as stated above the teachings of Wittern in view of Thompson disclose, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Wittern to include stiffening elements as taught by Thompson disposed next to the slot members of Wittern to provide rigidity to the sheet panels. In further, consideration the limitation "slot" is defined in *Webster's Dictionary* is as follows: "a narrow opening or groove" and "a narrow, elongated depression, groove, notch, slit, or aperture." In view of the Office the Thompson teachings disclose a stamped bead depression designed for reinforcing the panel the depression is recognized as a "narrow slot."

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/RAKESH KUMAR/

Examiner, Art Unit 3651

/Gene Crawford/

Supervisory Patent Examiner, Art Unit 3651

Conferees:

Patrick Mackey

/P.M./

Supervisory Patent Examiner, Art Unit 3651

Gene Crawford

/G. C./

Supervisory Patent Examiner, Art Unit 3651